

3861

No. ....

IN THE  
**United States Circuit Court of Appeals**  
**For the Ninth Circuit**

CHARLIE SING LEE,

*Plaintiff in Error,*

VS.

UNITED STATES OF AMERICA,

*Defendant in Error.*

**Transcript of the Record**

*Upon Writ of Error from the United States District  
Court for the District of Idaho,  
Southern Division.*

**FILED**

**APR 13 1922**

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

---

P. E. CAVANEY,  
Boise, Idaho,

*Attorney for Plaintiff in Error.*

E. G. DAVIS, U. S. District Attorney,  
FRED G. CRANE, Asst. U. S. Attorney,  
Boise, Idaho,

*Attorneys for Defendant in Error.*

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*In the District Court of the United States, in and  
for the District of Idaho, Southern Division.*

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UNITED STATES OF AMERICA,

vs.

CHARLIE SING LEE,

*Defendant.*

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No. 810.

INDICTMENT.

Charge: Unlawful sale of narcotics. Violation  
Act of December 17, 1914, as amended.

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The Grand Jurors of the United States of America,  
being first duly impaneled and sworn, within and for  
the District of Idaho, Southern Division, in the name  
and by the authority of the United States of America,  
upon their oaths do find and present:

That heretofore, to-wit, on or about the 20th day  
of December, A. D. 1921, in the City of Boise, in  
Ada County, Idaho, and in the Southern Division  
of the District of Idaho, Charlie Sing Lee, a Chinese  
person, did then and there, wilfully, unlawfully and  
feloniously *deal in* and *sell a* certain narcotic drug,  
to-wit, a certain derivative or compound of cocoa  
leaves, commonly known as cocaine, a more exact  
description and the exact amount thereof being to  
the Grand Jurors aforesaid unknown, without hav-  
ing first registered with the Collector of Internal

Revenue for the District of Idaho his name or style, his place of business and the place or places where such business was to be carried on, and without having paid the special tax provided by law to be paid by all persons selling or *dispensing* cocaine as aforesaid, which is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## COUNT TWO.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present:

That heretofore, to-wit, on or about the 21st day of December, A. D. 1921, in the City of Boise, in Ada County, Idaho, and in the Southern Division of the District of Idaho, Charlie Sing Lee, a Chinese person, did then and there, wilfully, unlawfully and feloniously, *deal in* and *sell* a certain narcotic drug, to-wit, a certain preparation or derivative of opium, commonly known as morphine, a more exact description and the exact amount thereof being to the Grand Jurors aforesaid unknown, without having first registered with the Collector of Internal Revenue for the District of Idaho his name or style, his place of business and the place or places where such business was to be carried on, and without having paid the special tax provided by law to be paid by all persons selling or *dispensing* such narcotic drug, which is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.



COUNT THREE.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further find and present:

That heretofore, to-wit, on or about the 22nd day of December, A. D. 1922, in the City of Boise, in Ada County, Idaho, and in the Southern Division of the District of Idaho, Charlie Sing Lee, a Chinese person, did then and there, wilfully, unlawfully and feloniously deal in and sell a certain narcotic drug, to-wit, a certain preparation or derivative of opium, commonly known as morphine, a more exact description and the exact amount thereof being to the Grand Jurors aforesaid unknown, without having first registered with the Collector of Internal Revenue for the District of Idaho, his name or style, his place of business and the place or places where such business was to be carried on, and without having paid the special tax provided by law to be paid by all persons selling or dispensing such narcotic drug, which is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

E. G. DAVIS,

*United States Attorney for the  
District of Idaho.*

J. H. COWELL,

*Foreman of the United States  
Grand Jury.*

WITNESSES EXAMINED BEFORE THE  
GRAND JURY IN THE ABOVE CASE:

Harry W. Ballaine.

Endorsed: Filed Feb. 19, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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DEMURRER.

I.

Comes now the defendant in the above entitled cause and demurs to the indictment herein made and filed in the above entitled Court on the 18th day of February, 1922, for the reason and upon the grounds that the first count in said indictment does not state facts sufficient to constitute a violation of the Act of December 17, 1914, as amended.

II.

That Count 2 of said indictment does not state facts sufficient to constitute a violation of the provisions of the Act of December 17, 1914, as amended.

III.

That Count 3 of said indictment does not state facts sufficient to constitute a violation of the Act of December 17, 1914, as amended, and further that the third count of said indictment shows upon its fact that the said count is indefinite and ambiguous

in that said violation is alleged to have been committed on the 22nd day of December, 1922.

Wherefore, defendant prays that said indictment, and each and every count thereof, be dismissed, and that the said defendant be discharged.

Respectfully submitted:

P. E. CAVANEY,

*Attorney for Defendant.*

Residence: Boise, Idaho.

Service of the above Demurrer by copy admitted and accepted this 20th day of February, 1922.

FRED CRANE,

*Asst. Dist. Attorney.*

Endorsed: Filed Feb. 20, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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### MOTION TO QUASH.

Comes now the defendant in the above entitled cause of action and moves the Honorable Court to quash and set aside the indictment found and filed in this Court against the said defendant on February 18, 1922, for the reason and upon the following grounds, to-wit:

#### I.

First: That the offense charged in Count 1 of said indictment is not stated with such degree of

certainty that the Court may pronounce judgment upon conviction according to law.

Second: That said Count 1 of said indictment alleges two separate and distinct offenses under the provisions of the Act of December 17, 1914, as amended, in that said count charges the defendant with dealing in and selling a certain narcotic drug on the date mentioned in said count, and said count 1 of said indictment is ambiguous and uncertain in that said count alleges that the defendant did then and there wilfully, unlawfully and feloniously deal in and sell a certain narcotic drug without having first registered with the Collector of Internal Revenue for the District of Idaho his name or style, his place of business and the place or places where such business was to be carried on without having paid the special tax provided by law to be paid by all persons selling or dispensing cocaine as aforesaid.

## II.

First: That the offense charged in count 2 of said indictment is not stated with such degree of certainty that the Court may pronounce judgment upon conviction according to law.

Second: That said count 2 of said indictment alleges two separate and distinct offenses under the provisions of the Act of December 17, 1914, as amended, in that said count charges the defendant with dealing in and selling a certain narcotic drug

on the date mentioned in said count, and said count 2 of said indictment is ambiguous and uncertain in that said count alleges that the defendant did then and there wilfully, unlawfully, and feloniously deal in and sell a certain narcotic drug without having first registered with the Collector of Internal Revenue for the District of Idaho his name or style, his place of business and the place or places where such business was to be carried on without having paid the special tax provided by law to be paid by all persons selling or dispensing cocaine as aforesaid.

### III.

First: That the offense charged in count 3 of said indictment is not stated with such degree of certainty that the Court may pronounce judgment upon conviction according to law.

Second: That said count 3 of said indictment alleges two separate and distinct offenses under the provisions of the Act of December 17, 1914, as amended, in that said count charges the defendant with dealing in and selling a certain narcotic drug on the date mentioned in said count, and said count 3 of said indictment is ambiguous and uncertain in that said count alleges that the defendant did then and there wilfully, unlawfully and feloniously deal in and sell a certain narcotic drug without having first registered with the Collector of Internal Revenue for the District of Idaho his name or style, his place of business and the place or places



where such business was to be carried on without having paid the special tax provided by law to be paid by all persons selling or dispensing cocaine as aforesaid.

Third: That said count 3 is ambiguous and uncertain in that said offense is alleged to have been committed on the 22nd day of December, 1922.

Said indictment is further defective in that count 1 is an independent and separate offense alleged to have been committed by the defendant on a separate and distinct date from the dates alleged in count 2 of said indictment and count 3 of said indictment. That there are three separate and distinct offenses alleged in the respective counts of said indictment on three separate and distinct dates which are not of such a nature as may be properly joined in the said indictment.

P. E. CAVANEY,  
*Attorney for Defendant.*  
Residence: Boise, Idaho.

Service accepted February 20, 1922.

FRED CRANE,  
*Asst. Dist. Attorney.*

Endorsed: Filed Feb. 20, 1922.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause).

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MOTION TO ELECT.

Comes now the defendant in the above entitled cause and moves the Court that plaintiff be required to elect upon which one of the counts the prosecution will rely in the indictment found against the above named defendant and filed in the above entitled court on the 18th day of February, 1922.

P. E. CAVANEY,

*Attorney for Defendant.*

Residence: Boise, Idaho.

Endorsed: Filed Feb. 21, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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JOURNAL ENTRIES.

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Tuesday the 21st day of February, 1922, and other dates as stated, the following proceedings, among others, were had, to-wit:

Present:

Hon. Frank S. Dietrich, Judge.

United States of America,

vs.

Charle Sing Lee,

*Defendant.*

CRIMINAL NO. 810.

Defendant's demurrer to and Motion to quash the indictment were argued before the Court by the District Attorney and P. E. Cavaney, Esq., counsel for the defendant. Whereupon the Court sustained the demurrer and motion as to the third count and overruled as to the other counts of the indictment.

The defendant then waived the reading of the indictment and was furnished with a true copy thereof. The Court asked the defendant if the name by which he was indicted was his true name, and the defendant replied in the affirmative.

The Court asked the defendant if he pleads guilty or not guilty of the offense charged in the indictment, and the defendant pleaded not guilty.

The cause was set for trial at ten o'clock February 22, 1922.

Wednesday, February 22, 1922.

This cause came regularly on for trial before the Court and a jury, the defendant being present with his counsel, P. E. Cavaney, Esq., the Government being represented by E. G. Davis, District Attorney. The clerk, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper, to secure a jury.



W. E. Graham, R. D. See and Oscar Hanson whose names were so drawn on voir dire, examined and passed for cause, and excused by the Court on peremptory challenge. Following are the names of the persons whose names were drawn from the jury box, who were sworn on voir dire, examined and accepted by counsel for the respective parties, and who were sworn to well and truly try said cause and a true verdict render, to-wit: Edward L. Hass, J. E. Alderson, Harve Douglass, Wm. H. Thompson, W. S. Decker, George Bennett, Wm. Stark, A. K. Baker, Nick Wilson, Martin Stien, Henry McGuire and A. C. Thompson. The indictment was read to the jury by the District Attorney, who informed them of the defendant's plea entered thereto.

Here J. M. Adams, H. W. Ballaine, and H. W. Cole were sworn and examined as witnesses and other evidence was introduced on the part of the United States and here the plaintiff rests.

The defendant here moves the Court to instruct the jury to return a verdict for the defendant, which motion was denied by the Court.

Harry Fong, Fong Ping, Fong King and Wm. L. Jones were sworn and examined as witnesses on the part of the defendant, and here the defendant rests.

On rebuttal E. S. McDermott was sworn and examined as a witness on the part of the Government, and here both sides close.

The defendant here renews his motion for an instructed verdict in favor of the defendant, which motion was denied.

The cause was argued before the jury by counsel for the respective parties, after which the Court instructed the jury, then placed them in charge of A. J. Robinson, a bailiff duly sworn, and they retired to consider of their verdict.

On the same day the jury returned into Court and the defendant and counsel being present. The Court asked the jury if they had agreed upon a verdict, and they, through their foreman, replied that they had, and thereupon presented their written verdict which was in the words following, to-wit:

“IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF IDAHO,  
SOUTHERN DIVISION, FEBRUARY  
TERM, 1922.

United States of America,

vs.

Charlie Sing Lee,

*Defendant.*

VERDICT,

We, the jury in the above entitled cause, find the defendant guilty as charged in the first count, and we find the defendant guilty as charged in the second count of the indictment.

J. E. ALDERSON,

*Foreman.”*

The verdict was recorded in the presence of the jury, then read to them and they each confirmed the same.

The jury was discharged, and ten o'clock A. M. February 28th, 1922, fixed as time for pronouncing judgment. Thirty days were allowed for preparing and filing a bill of exceptions.

Saturday, March 4, 1922.

Ten o'clock A. M. March 8, 1922, was fixed as time for pronouncing judgment herein.

Wednesday, March 8th, 1922.

Comes now the District Attorney with the defendant and his counsel into Court, this being the time fixed for pronouncing judgment herein.

The Court asked the defendant if he had any legal cause to show why judgment should not be pronounced against him, and the defendant having none, and no sufficient cause appearing to the Court, it was announced to be the judgment of this Court that the defendant pay a fine of \$500.00 and be confined in the County Jail of Ada County, Idaho, for a term of ten months on the first count; and pay a fine of \$500.00 and be confined in said jail for a term of ten months on the second count of the indictment. The terms of imprisonment on the two counts to run concurrently.

Upon application of defendant's counsel, it was ordered that the execution of this judgment be stayed, pending the defendant's appeal on Writ of

Error, and that the defendant be released upon a cash bond in the sum of \$2500.00 pending the judgment on said appeal.

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(Title of Court and Cause).

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### BILL OF EXCEPTIONS.

The defendant herein, Charlie Sing Lee, was indicted by the Grand Jury for the violation of the Act of December 17, 1914, as amended, upon two counts, to-wit:

For dealing in and selling cocaine on the 20th day of December, 1921, and for dealing in and selling morphine on the 21st day of December, 1921, at Boise, Idaho.

A trial by a jury was had on the 22nd day of February, 1922, and the defendant was found guilty as charged, whereupon on the 8th day of March, 1922, the Court sentenced the said defendant to imprisonment in the County Jail of Ada County, Idaho, for ten months on each count, the sentence to run concurrently, and to pay a fine of \$500.00 on each count.

Thereupon the defendant filed a petition for a writ of error to the United States Circuit Court of Appeals on the 8th day of March, 1922, and on the 9th day of March, 1922, the writ of error duly issued thereon and citation was duly made and filed.

The defendant herewith presents the following proceedings had upon the said trial and the evidence introduced and the exceptions taken thereto and allowed by the Court, all of which defendant claims and says was manifest error which was committed to his injury, to-wit:

James Hill, a witness on behalf of the Government testified as follows:

Witness resided at Salt Lake City, Utah, for twenty years. Came to Boise, Idaho, on the 18th day of December, 1921, from Pocatello, Idaho. Witness did not know defendant. Saw defendant for the first time on the 20th day of December, 1921, in a China store between Grove and Front on Seventh Street, Boise, Idaho. Had a conversation with the defendant. Told defendant that he, Hill, wanted to buy "Junk" "Cocaine" and he told me to come back. There were two policemen walking up the street now so I went back at nine o'clock that evening and saw the defendant in the store and asked him if I could get some cocaine. He said yes.

Q. Did he sell you any cocaine at that time?

MR. CAVANEY: Just a minute. That is leading and suggestive, if Your Honor please.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

A. Yes, sir.

THE COURT: What did you say?



A. I told him I wanted to get two and a half's worth of cocaine.

MR. DAVIS: Two and a half dollars worth?

A. I gave him the money and he went into a rear room out of the store and slipped me a package and the next morning at nine o'clock I delivered the package to Cole and Ballaine in the United States Attorney's office, who kept it ever since.

No one else saw the defendant deliver the cocaine to me. Cole gave me money to make the purchase. I saw the defendant the next time on December 21st, at three o'clock in the afternoon at the same place. I went down there to get morphine. I told the defendant I wanted to get a \$1.00 package of morphine and he went in the rear room and came out with the package and gave it to me. He delivered the same as the delivery of the cocaine was made. I delivered the morphine to Ballaine in the lavatory of the pool room on the corner of Seventh and Main streets about five minutes after I made the purchase.

Q. Did you see the defendant at any other time on the day immediately following these two days?

A. I did, yes, sir.

Q. Did you attempt to make a buy from him at that time?

MR. CAVANEY: Just a moment. We object as incompetent, irrelevant and immaterial. It doesn't tend to prove or disprove any of the allega-

tions in the information, as to what he may have done subsequent to the dates of the alleged charge in the information.

THE COURT: Unless there is some reason that I do not appreciate now, Mr. District Attorney, I think at this juncture I shall have to sustain the objection.

MR. DAVIS: That and other testimony will be offered, if Your Honor please, on the theory that that evidence is competent for the purpose of proving continuous conduct, proving the intent and the knowledge and the motive with which these sales were made; for proving also that he was, as charged in the indictment, a dealer in these drugs. There are several theories on which the evidence is entirely competent.

THE COURT: Well, perhaps on the last ground—not on either of the others, because there is no question here of intent, at the present time at least. If the act was done, as the witness testified, there couldn't be any question about the intent, under the present status of the testimony, and a continuing offense, I couldn't admit it on that ground. Let me see the form of your allegation here as to dealing. (Reading indictment). What have you to say as to that, Mr. Cavaney?

MR. CAVANEY: If Your Honor please, I filed a motion to quash and a demurrer to this indictment, upon the ground and for the reason that

there was a duplicity in the pleading, in that they were charging this man with being a dealer in and also selling morphine. And at this time we desire to interpose an objection to any testimony offered by the prosecution in this case upon the allegation in the complaint or in the indictment that this plaintiff was dealer in narcotic drugs, and for the further reason that evidence of any other subsequent offense would not be admissible upon any theory in this action, because we are compelled to meet the allegations and the indictment as charged here upon two counts, and the proof and our defense would necessarily be confined to meet the proof, or to meet the charge in those two counts. And it is uniformly held by the Federal Courts that proof of other offenses is not admissible in actions of this kind to prove character or motive or for any other reason. If the Court desires me to cite the Court authorities on that point I will be glad to do so.

THE COURT: No. I have already ruled in your favor upon that point.

MR. CAVANEY: We will ask to have all testimony stricken in regard to any other sale or any other conversation affecting any sale, or for the purpose of consummating a sale subsequent to the last date charged in the information, to-wit, the 21st day of December, 1921.

THE COURT: I think I shall have to overrule the objection.



MR. CAVANEY: Note an exception.

MR. CAVANEY: As I understand the ruling of the Court, you will permit testimony of any offense subsequent to the dates alleged in the information?

THE COURT: Oh, we have not gone so far yet. This was on the following day. It will be somewhat within the discretion of the Court as to just how far off in time acts may be shown, but this is on the following day, and the charge is that on or about these two days defendant was selling and dealing in.

MR. DAVIS: Q. Did you, on the 22nd day of December, 1921, that is, the day immediately following the day on which you made your second purchase, attempt to make a third purchase from Charlie Sing Lee?

A. I did.

MR. CAVANEY: If Your Honor please, in order to save our record on that, we will object as incompetent, irrelevant, and immaterial, and evidence adduced of, or attempted to be adduced of, a sale subsequent to the time charged or alleged in the information.

THE COURT: The objection is overruled. You may have your exception, and it may be understood that your objection goes to all of these questions as to this particular sale, and that they are overruled, and that you have exceptions to them.

MR. DAVIS: Answer the question, Mr. Hill.

A. I did.

## CROSS EXAMINATION.

Occupation a general cook. Was doing nothing before I came to Idaho from Salt Lake. Was an addict for 25 years. Used both cocaine and morphine hypodermically. Was sent from Boise, Idaho, to Blackfoot for the cure December 28, 1921. Was in Boise for ten days before I went there. Did not follow any vocation in Boise. Bought morphine and cocaine in Boise pretty often. Bought it for my own use. Have been cured of the use of drugs for about six weeks. I was cured once before. I was off for four years and the doctor put me back on it for asthma and I have been on it ever since. I met Ballaine through Cole and Cole through Watts. I have known Watts, Narcotic Inspector, all my life. I was engaged by the Chief of Police at Salt Lake to work for Watts; then with Cole; then with Ballaine. Worked with Watts. I came here for Cole on December 18, 1921, from Pocatello, Idaho, where I put in one day and night. Got my expenses from Cole in Pocatello to come to Boise, Idaho. I don't know how much money I got for expenses. Got more money from Cole in Boise. I don't know the number of the house where I purchased the cocaine and morphine from the defendant. Hary Fong is the manager of the place. I went down to Harry Fong's place to get drugs. Was told before I came to Boise that Cole and Ballaine were trying to get the defendant for two years. I consented to act

for them. There was a couple of Chinamen in there when I bought. Harry Fong was not there. There was a little old Chinaman running the store. Witness marked Exhibit "A" "J. T. H." Did not turn exhibit over to Cole and Ballaine until nine o'clock the day after the purchase and never informed Cole or Ballaine that witness had made the purchase before the time of the delivery. Witness did not taste the contents of the package but can tell morphine and cocaine by its looks. Don't know who was in Harry Fong's store at the time of the purchase. I got the money from Ballaine. Ballaine sent me to Blackfoot to be cured. Cole and Ballaine both knew that I was using cocaine and morphine before I came to Boise.

HARRY W. BALLAINE, witness for the Government.

Is a Federal Narcotic Inspector for the district of which Idaho is a part. Was in Boise about the 20th of December, 1921. Witness Hill was working for me in Boise. I and Cole sent Witness Hill to made purchase of morphine from the defendant. Witness and Cole gave Hill \$2.50 in money to go down and buy from the defendant. We told the witness Hill to bring back the purchase the next morning to the United States Attorney's office. He brought it back and the package was marked "Exhibit A." Package was marked "Bought from Charlie Sing Lee on 12-20-21 H. W. B.-H. W. C.-

J. T. H., 9 A. M." Witness is a graduate from the school of pharmacy of the Pullman Agricultural College of Washington in 1912. In actual practice of pharmacy for nine years. Exhibit A contained cocaine. Made arrangements with Hill next day to buy a bindle of morphine. Gave witness \$1.00 and told him to go to the same place and purchase from the defendant. Witness brought package back, "Exhibit B," and gave it to me in the pool room on Seventh and Main streets. Package marked "12-21-21 H. W. B.-J. T. H." Marks were put on in the afternoon some time in the United States Attorney's office. Witness says package contains morphine.

MR. DAVIS: We offer Exhibit B in evidence.

MR. CAVANEY: We object as incompetent, irrelevant and immaterial. It has not been shown by this witness that this is the same package that was procured from the defendant at that time and place.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

MR. DAVIS: Q. Did you make any further arrangements with Mr. Hill for the purchase of narcotics from this defendant at or about that time?

MR. CAVANEY: On that date, or what?

MR. DAVIS: Either of those dates, or the date immediately following.

MR. CAVANEY: We will object to any testimony of any sales or anything else on a date subsequent to the finding in the indictment, for the reasons heretofore interposed in objecting to the testimony of the former witness.

MR. DAVIS: I understand you have a general objection.

MR. CAVANEY: I did as to that witness.

THE COURT: The objection is overruled.

MR. CAVANEY: Note an exception.

A. Yes; I gave him money and told him to buy from him any time he could, the rest of that day, but he was unable to procure any more.

MR. DAVIS: Q. And did he bring you any further narcotics which he stated he had bought from Charlie Sing Lee?

A. He did not.

Q. On the 22nd day of December, 1921, Mr. Balaïne, did you see Charlie Sing Lee at any time?

MR. CAVANEY: If Your Honor please, we object as incompetent, irrelevant and immaterial, subsequent to the times charged in this indictment; and of course, I don't know the purpose for which this is attempted to be proved, but I cannot understand why a subsequent offense or sale or attempted sale would have any bearing on this particular transaction.

THE COURT: You may be borrowing trouble, Mr. Cavaney. He just asked him whether he saw him. The objection is overruled.



A. I saw him.

MR. DAVIS: Q. On what day, Mr. Ballaine?

A. The 22nd day of December.

Q. Did you make a purchase of narcotics of the defendant on that day?

MR. CAVANEY: If Your Honor please, we desire to object as incompetent, irrelevant and immaterial, and not the date as charged in the information, subsequent to the time.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

A. I did.

MR. DAVIS: Q. You may state the circumstances under which the purchase was made. When did you make the purchase?

A. At six-fifteen on the evening of December 22nd, 1921.

Q. And where did you make it?

A. At a Chinese store; I think they know it as Fong's store, and I believe the number is 211 South Seventh street.

Q. Is that the store near the alley between Front and Grove?

A. It is on the alley between Front and Grove, on Seventh.

THE COURT: Gentlemen of the jury, the charges in this case are selling and dealing in these drugs on the 20th and 21st of December, 1921. If you convict the defendant at all it will have to be

upon the assumption that he was **dealing** in and selling the drugs upon those two dates, one of those two dates. I am going to permit this testimony to go before you as possibly throwing some light upon the question whether or not he was dealing in and selling drugs upon the 20th and 21st. You can't find him guilty under this indictment merely because he may have sold on the 22nd, if he did sell, but you may consider a sale, if you find a sale was made, on the 22nd, as a circumstance bearing upon the question or the issue raised by the indictment as to whether or not he was selling and dealing on the two preceding days.

MR. DAVIS: Now you may answer the question. Proceed with your answer.

WITNESS: I don't know what it was.

Q. All right. I will ask another question. You may describe the circumstances under which this sale was made, narrating what was said by you to Charlie Sing Lee, and what was said by him to you, and what passed between you, if anything.

A. I went to this Chinese store at five-thirty December 22nd, 1921, and there were several Chinamen in the store, and I asked if Charlie Sing Lee was there, and they told me no. I asked when he would be back, and they said maybe an hour. I retired and went back again to the store at six-fifteen. The defendant was lying on a bench or a table just to the left of the door, as I entered. I

had never seen him and didn't know him. I asked him if Charlie had come back, and he said 'Yes—what do you want?' I says, "I want to see Charlie Sing Lee." "Well, all right," he says. I says, "Are you Charlie Sing Lee?" "Yes." I says, "I want to buy some M."

THE COURT: Buy some what?

A. "M". That is commonly used by addicts, meaning morphine. He says, "I haven't got very much." I will change that. He says, "I haven't got any, but I can sometimes get it for friends." Well, I says, "I don't want very much. How do you sell it?" He says, "A dollar a bindle." "Well," I says, "that will be enough for me tonight." He says, "All right; give me your dollar." I gave him the dollar. And he says, "Now, go out and go down to the corner and stall around until I come. These boys don't like to have you in here." I went down to the corner, and as I turned around I seen Charlie coming out of the store building. I looked over to my right and there were two or three men coming along the sidewalk. So I stayed on the corner until they had passed. Charlie sauntered slowly down towards me and stepped up into the doorway until these parties or men that I have spoken of all passed. Then I walked towards him, and he towards me, and he handed me the bindle of morphine. I turned around and says "Charlie, I expect some money for Christmas and would like to



buy it in a little larger quantities. How much can I get an eighth for?" He says, "You can buy a dram for seventeen bucks." I says, "That is too much; I can only pay fifteen. See you tomorrow." That was all.

Q. Have you this morphine with you that you say you purchased?

MR. CAVANEY: Just a minute. In order that I might save the record on this, I move at this time to strike from the record all of the testimony of this witness relative to a sale on the 22nd day of December, 1921, to this witness, for the reason and upon the ground that it is incompetent, irrelevant and immaterial, and an offense separate and distinct from the offense charged in the indictment.

THE COURT: The motion is denied. You may have exception.

MR. DAVIS: I was asking you if you had the morphine that you purchased from Charlie Sing Lee?

A. I have it.

Q. May I see it?

A. (Handing package to District Attorney)  
Yes.

MR. DAVIS: Can you mark that some way?

Said package was marked

*PLAINTIFF'S EXHIBIT "C".*

Q. Showing you Plaintiff's Exhibit C, for identification, I will ask you to state what marks, if

any, are on that package, and when they were placed there.

A. 12-22-21, one dollar, Charlie Sing Lee, H. W. B. They were placed there at room 116 Owyhee Hotel, between six-thirty and seven o'clock December 12th, 1921.

Q. What date?

A. December 22, 1921.

Q. Are the contents of this package the same as at the time you purchased it from Charlie Sing Lee?

A. They are.

Q. And have you examined the contents?

A. I have.

Q. What are they?

A. Morphine.

MR. DAVIS: I will offer this in evidence.

THE COURT: Is that what is known as a bindle of morphine?

A. Yes, sir; that is a bindle.

MR. CAVANEY: We would like to interpose the same objection to this testimony that we have interposed to the testimony heretofore.

THE COURT: The same ruling. You may have an exception.

MR. DAVIS: Q. At the time you made this purchase, Mr. Ballaine, were you dressed as you are now?

A. No, sir.

Q. How were you dressed on that occasion?

A. Why, I had on an old coat and an old vest, and a dark soft-collared shirt, without a tie, and black slouchy cap, and a pair of old shoes.

Q. Did you attempt to make any other purchases from Charlie Sing Lee?

A. I did.

Q. On or about the 21st, 22nd, or 23rd, along about there?

A. The 23rd, I did.

Q. With what success?

A. No success whatever.

It was arranged by Cole, Ballaine and Hill in Pocatello that Hill was to come and make a purchase from the defendant. Cole and Ballaine were using Hill for the purpose of procuring evidence of the sale of narcotics and were furnishing him with money and means to do so. Witness Ballaine instructed Witness Hill to go out and scout around Boise and try to make purchases of narcotics. Witness Ballaine had on a pair of trousers that he had worn around the store for some time; an old pair of shoes, a dark colored coat and vest he had worn in the store; an old slouch cap. Put these clothes on for the purpose of disguising himself so that he would not be suspected of being a narcotic inspector and hunting out men for violation of the act. Kept the costume on until the evening of the 26th of December except when witness got through work and went to dinner, would then change clothes. Wit-

ness Ballaine was not present when Hill made the purchases from the defendant.

Q. You are familiar with the effects of morphine and cocaine upon a person's general character or habits and character, aren't you?

A. I think so.

Q. What effect, if any, does the use of morphine or cocaine have upon a person?

THE COURT: This, of course, is not cross examination.

MR. DAVIS: We object as not proper cross examination.

THE COURT: You will be bound by his answers if you make him your witness.

MR. CAVANEY: I understand that we will be bound, but I think there is another purpose that we desire to bring out by this witness.

THE COURT: Well, you are making him an expert now. He hasn't testified as an expert.

MR. CAVANEY: I believe he did. He qualified that he was a man competent—

THE COURT: He qualified to the extent of his ability to know morphine and cocaine.

MR. CAVANEY: Yes.

THE COURT: But not as to the effects of the use of morphine or cocaine upon a human being. At least I don't recall any evidence at all that he gave upon that point. He qualified as a pharmacist and stated that he knew what cocaine is, and morphine.

MR. CAVANEY: Of course, I believe that ordinarily a pharmacist would be able to tell the effects generally, what morphine or cocaine might have on a person, and we desire—

THE COURT: He didn't testify upon that point. If there is no objection, you may make him your own witness, but, as I say, you will be bound by his testimony. But I will not permit you to rebut his testimony.

MR. CAVANEY: Well, note an exception.

THE COURT: So that there may be no misunderstanding, I simply sustain the objection then that this isn't cross examination, and you may have an exception to that.

MR. CAVANEY: Yes.

Witness Ballaine was not present at any time either purchase was made by Hill from the defendant.

Q. You are relying absolutely on the statement of Mr. Hill in regard to whether or not he had made the purchase?

THE COURT: No, that isn't—

MR. DAVIS: I object to it as incompetent, irrelevant, and immaterial.

THE COURT: I can't see that that is material. You can argue that.

MR. CAVANEY: Note an exception.

MR. DAVIS: The Government rests.



MR. CAVANEY: At this time we desire that the record may show that we move the Court at this time—

THE COURT: I think before the Government rests, Mr. District Attorney, you should offer to prove why it was—it may not be very material—but why it was that this man, Mr. Hill, was sent to this place, as bearing upon the question of the defense which is being made in some of these cases,—that the sale was induced by the Government.

MR. DAVIS: Well, I thought I would make that in rebuttal, if that defense should be made.

THE COURT: No. I think you would better make it now.

MR. DAVIS: Did you say why he was sent here?

THE COURT: No. Why he was sent to this place to get the evidence, if he was sent there. Some statement has been made that he was employed to get the evidence against the defendant.

MR. DAVIS: Yes, we will bring that out. Call Mr. Cole.

HAROLD W. COLE, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

I was known to most of the Chinese in Boise and for that reason there were some cases I could not make. Hence I asked Mr. Watts, Narcotic Agent

at Salt Lake, to send me a stranger whom I could use and he sent me Hill.

MR. DAVIS: Q. Was there anything unusual about an arrangement of that kind? (Referring to the arrangement with Witness Hill) in the manner of obtaining evidence against dealers in narcotic drugs?

MR. CAVANEY: We will object to that, if Your Honor please, as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

A. No, sir; nothing unusual.

Q. Now, were any instructions given to Mr. Hill about the manner in which he should approach these parties from whom he was to purchase?

A. No particular instructions. I had been told by Mr. Watts that he knew the methods necessary to get evidence, and I talked with him in regard to some of his experience, and I knew that Hill knew the methods, and simply told him that Charlie Sing Lee had been—I guess I can't say—it had been my information, and so forth, that Charlie Sing Lee—

THE COURT: Yes, this is the point.

MR. DAVIS: Yes, you can say that.

THE COURT: I will say, Mr. Cavaney, this same question has arisen before, and I assume from the course of some of your examination of witnesses that you intend to make the contention which is be-

ing made more or less frequently, that the Government cannot prosecute a case where its agents have gone out and gotten the contraband stuff from the defendant. Now, if that contention is to be made in this case I shall permit the witness to go far enough to show the fact, if it be a fact, that they suspected, that is, the Government agents suspected this defendant of being engaged in the business of selling these drugs, and that it was for that reason that they sought to secure this evidence. Now as to just how far he should be permitted to go will depend somewhat upon your own disposition or attitude in the matter. I shall permit him to go at least that far, if you are going to make that contention, upon the theory that there is a distinction between a case where the Government sends someone to buy liquor or buy narcotics from one who is not suspected of violating the law and sending him to another person against who there are reasons to believe is violating the law.

MR. CAVANEY: Well, if Your Honor please, the only objection I see to that is this, that so far as anybody may know we would never know what they might think themselves or whether they might suspect anybody, as to whether or not they would suspect any ordinary person of the commission of a crime, and the evidence is entirely within their own knowledge, and we have no way of finding out on cross examining or anything else; we would not be



permitted, in other words, to go into an elaborate cross examination to ascertain the reasons and the facts why they had these suspicions.

THE COURT: Yes; I will permit you to go into that on cross examination. I say it is for you to determine, whether you want to go into that upon cross examination or not. I wouldn't permit the witness at the outset to go into these facts and circumstances because they might be prejudicial; but if you can feel that the statement is not well founded, that the government agent did have reason to believe the defendant was engaged in this business, you may cross examine him.

MR. CAVANEY: Well, of course, as I understand the ruling in those cases—I might be in error—as I understand the ruling in the cases which have been decided and upheld in the federal courts, it is that the Government is not permitted either—whether it be that they have information of a person having been guilty of a crime, that they will be permitted to entice, induce or entrap any person into the commission of an offense, the theory being this, that it is not the Government's policy to be a party to the commission of an offense, and that the cases so hold, that where the offense has been committed—

THE COURT: I don't care to hear a discussion of that general question at the present time; I hear it so frequently. I will hear you briefly upon it at the proper time. But I have heard a full dis-

cussion of it in the last two or three days, and I have heard several discussions of it just recently in Phoenix, and wherever I go, so that I wouldnt want to take very much time discussing a question, concerning which I should be familiar. I will hear you briefly upon that general question later on, if you desire to be heard. But as I say, I am going to permit the witness,—I asked the District Attorney to produce him for this one purpose, in order that I may rule intelligently upon the motion which I anticipate you will make. And if it turns out from the undisputed testimony that the Government did entice an innocent man into violating the law I will take the case away from the jury; but if the evidence is doubtful upon it I will submit it to the jury, with instructions.

MR. CAVANEY: Well, of course—

THE COURT: I will hear you upon the general question later on.

MR. CAVANEY: Well, I will save my record on this matter as we proceed.

THE COURT: Yes,—You may proceed.

MR. DAVIS: Q. I will ask you, Mr. Cole, whether or not you had any reason to believe, and, if so, what that reason was, that the defendant was engaged in the sale of narcotic drugs?

MR. CAVANEY: We object to that as incompetent, irrelevant and immaterial.

THE COURT: You had better divide your question.

MR. DAVIS: Q. I will ask you whether or not you had reason to believe that the defendant was engaged in the sale of narcotics?

A. I had reason so to believe.

MR. CAVANEY: I will ask to have it stricken out.

THE COURT: You may make your objection now.

MR. CAVANEY: We object as incompetent, irrelevant, and immaterial, and move that the answer of the witness be stricken out, for the reason and upon the grounds that this evidence would be inadmissible to show the commission of any other offense or the suspicion of any other offense than the offense charged, for which we are charged in the indictment and for which we are called to meet, and that there is no other date other than the specific dates mentioned in the indictment upon which there is an alleged sale that has been made by this defendant.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

A. I had reason to believe that he was a drug dealer.

MR. DAVIS: What were your reasons for so believing, Mr. Cole?

MR. CAVANEY: We will object to that for the same reasons.

MR. DAVIS: Q. What information had you that he was a dealer?

MR. CAVANEY: We will object to that on the same grounds and for the same reasons.

THE COURT: I think I shall sustain the objection. I think I will ask you two or three questions myself. You may object to them, Mr. Cavanaugh, just the same as if counsel asked them.

How long had you been operating in this territory as such special agent, Mr. Cole?

A. About a year and nine months.

Q. (By the Court). Did you know the defendant yourself?

A. Yes, sir; I have known him for practically that length of time.

Q. And had you been here frequently or infrequently?

A. Oh, an average of once a month for three or four days or a week, or sometimes ten days.

Q. I assume that the reasons of which you speak are based upon information that came to you from different sources?

A. Conversations with addicts and personal observation.

Q. And it was because of that information or that belief that you employed the witness here?

A. Yes, sir.

Q. Who had been an addict?

A. Yes, sir.

Q. For the purpose of procuring evidence of sale?

A. Yes, sir; evidence.

THE COURT: I think that is as far as I will permit you to go.

MR. CAVANEY: With the understanding of the Court that my objection goes to all of this questioning?

THE COURT: Yes. Your objection may be understood as going to each one of these questions, and as being overruled, and you may have an exception.

MR. CAVANEY: Yes, And I move to strike each and all of the answers to the respective questions.

THE COURT: The motion is denied.

MR. CAVANEY: An exception.

THE COURT: You may have your exception. Unless you are going to cross examine him on the point, I will instruct the jury now, to guard against prejudice to the defendant from this testimony, and state to them the purpose for which it is admitted and the only purpose. If you prefer, I will do that now, or after your cross examination .

MR. CAVANEY: That will be all right. I am not going to cross examine him.

THE COURT: Gentlemen, I will say to you, perhaps further in explanation of what I have already said in your presence, concerning the evidence just given by this witness as to certain reports and rumors which may have come to him inducing him to



believe that the defendant was engaged in the illicit sale of these drugs: You cannot consider those rumors or statements or the witness belief as any evidence at all that the defendant here is guilty of these charges, or that he was in fact engaged in violating the law, or did in fact violate the law. The only purpose for which you can consider this evidence, and the only purpose for which I have received it, is to throw some light upon the circumstances under which the Witness Hill was employed, this former addict, to go to this place, for the purpose of getting evidence. It bears only upon the imputation or charge that the Government was seeking to and did induce an innocent man to violate the law. I will explain more fully the principle by which you are to be governed in passing upon this evidence later on. It is enough to say now that you are not to consider it as evidence of the defendant's guilt.

MR. CAVANEY: Now, if Your Honor please, may the record show that the Government having rested their case, the defendant at this time moves the Court to instruct the jury that there is no evidence, competent evidence, before them, for their consideration, covering the charges in this indictment, to-wit, of having sold or dealt in or sold narcotics, to-wit, cocaine or morphine, on the respective dates alleged in the information, and to instruct the jury to find the defendant not guilty, for the



further reason and upon the grounds that the evidence shows in this case that the person who procured the evidence was employed and procured by Mr. Cole and Mr. Ballaine, the narcotic inspectors, who had the matter in charge of investigating the violations of the narcotic act in the state of Idaho and elsewhere, and that all of the evidence which has been procured in this case, so far as it affects the indictment herein, were procured by and with the consent of Mr. Cole and Mr. Ballaine through the use of an addict, Mr. James Hill, and that that addict was employed by the said Cole and Ballaine for the purpose of procuring evidence and for the purpose of inducing, enticing and persuading the defendant in this action or any other person to sell or give or otherwise dispose of narcotics or morphine or other drugs, and then after such procurement or sale had been made, that the said party that had made the sale was to be arrested, and was in fact arrested by the Government of the United States, charged with the offense—was charged with the identical offense which the Government had procured the defendant to commit. In other words, that the defendant in this action having been induced and persuaded by the agent of the Government of the United States to purchase the said cocaine and morphine, as charged in the counts one and two of said indictment, and then, after the purchase of the same was made, an arrest has been

made of this defendant, and he is now here defending the said charge. And that the evidence conclusively shows that there was no valid or good reasons why the Government should have resorted to any extraordinary methods, or why they resorted to this method, in order to procure evidence against this particular defendant. And that evidence of this nature having been procured in the manner in which it was procured, should not stand.

THE COURT: The motion is denied.

MR. CAVANEY: Note an exception.

HARRY FONG, produced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Resides in Boise, Idaho. Has known the defendant three or four years. Is acquainted with Cole, narcotic inspector. Never met Ballaine but know him when I see him. Is not acquainted with the witness Hill. Never saw Hill before I saw him in the court room. Hill was not in his store on the 20th and 21st of December, 1921. Witness was there all day of these dates. Never saw Hill at any time in my store. Did not see Ballaine in my store on December 22, 1921. Was there all day on that date. Runs his place personally. If I am not there Fong King runs my store. I was running my business all day and evening of the 22nd day of December, 1921. There were no white men in my store on that day. There were no white men in my store

during the week of December 20, 21 and 22, 1921. Charlie Sing Lee was in my place on the 20th and 21st of December in the morning. Charlie Sing Lee left my place in the morning and returned some time in the evening about ten o'clock. Witness had a conversation with the defendant after he came back from the garden in the evening. The defendant was down at the China garden on the 21st of December, 1921, and came back that night to my store about ten o'clock.

#### CROSS EXAMINATION.

The reason I was in my store on the 20th of December, 1921, was because it was near Christmas and I thought my cousin was coming. I was not out of the store on that day until about 12:30 o'clock in the evening. I was also in my store all day on the 21st of December, 1921, until 12:30 o'clock in the evening. I was in my store all day on the 21st except when I went to the post office in the morning. If the witness Hill had come in my store on the 20th or 21st I would have known it.

FONG PING, a witness for the defendant, testified as follows:

Lives in Boise, Idaho, in a China garden. Garden is known as Chung Chong Yong. Is engaged in raising vegetables. The garden is located across the bridge in South Boise. Is acquainted with the defendant. Has known him a year and saw the defendant on the 20th of December, 1921. Charlie

Sing Lee first came down to my garden on the 19th of December, 1921. He came down there to help me pick vegetables and to try to buy an interest in the garden. He was down there during that time about five days. On the 20th of December, 1921, he came in the morning about ten o'clock and stayed until night. He left my place after supper, about ten o'clock, on the 21st day of December, 1921. Defendant came down to my garden about the same time as he did on the 20th and left about the same time in the evening. He was at my garden on the 22nd day of December and he left about nine o'clock in the evening of the 22nd. My garden is about twenty blocks from Harry Fong's store.

#### CROSS EXAMINATION.

Charlie walked down to my garden and he walked back. The defendant did not leave there before dark. We generally have supper about eight or half past eight o'clock. Defendant was at my place on the 23rd day of December also. The defendant is a gardener. Defendant worked in the gardens. He worked in November last year. On the 24th of December, 1921, defendant left my place in the afternoon. I forget what time.

FONG KING, a witness on behalf of the defendant, testified as follows:

Witness stays at Harry Fong's store. Has known defendant for three years. Met defendant on the 20th of December, 1921, in Harry Fong's



store. I went down to the China garden Chung Chong Yong about eleven o'clock and stayed there until nine or ten that night. Witness was contemplating on going in partners with the defendant in the garden. Witness and the defendant went down to the garden at ten or eleven o'clock in the morning and returned in the evening after supper about nine or ten o'clock and done the same on the 22nd day of December. Witness did not go with the defendant on the 24th of December. Witness went by himself on that day.

#### CROSS EXAMINATION.

Defendant went also on the 19th of December to the garden.

WILLIAM LEE JONES, a witness on behalf of the defendant, testified as follows:

Is in the restaurant business between Sixth and Seventh streets in Boise, Idaho. Was in that business on the 20th of December, 1921. Have known the defendant for about two years. Saw defendant on the 20th of December, 1921, over at the China garden. He was there sorting potatoes. Witness went over there to buy potatoes for his restaurant. Witness was at the China garden about half past twelve. Was there about an hour and a half. There were several Chinese there. Saw Fong King there. Saw defendant on the 21st of December, 1921. He was there at the garden. Saw him about one o'clock. Was there at that time about three-quarters of an

hour. Defendant was working there with potatoes and onions. Sacked some potatoes for the witness. Witness was down to the China garden about five o'clock in the evening of December 22, 1921. I stayed there that day until the delivery Chinaman came back about two hours afterwards. Have been in the restaurant business at the present place since December 20th, 1921. Witness was over on the 22nd day of December, 1921, on business. Witness had land to rent and wanted to rent it to the Chinamen. Has a lease on a place from Mr. Davis. Is going to rent it to Chinamen.

#### CROSS EXAMINATION.

MR. DAVIS: Q. Were you ever convicted of a felony, Mr. Jones?

MR. CAVANEY: We object as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. CAVANEY: Note an exception.

THE COURT: You may answer.

A. Yes, sir.

MR. CAVANEY: The defendant rests. I want the record to show, if Your Honor please, that I made the same motion as heretofore made, before the argument.

THE COURT: Very well. The same ruling.

WHEREUPON, after argument by counsel, the Court instructed the jury, explaining to jurors at length, under what circumstances government



agents may properly secure evidence against persons suspected of being engaged in the sale of narcotics in violation of the laws, and the limitation upon such right, and also again explaining that testimony of the witness Cole touching the employment and use of Hill was not to be considered as evidence of defendant's guilt; and also advising the jury upon other matters of law and criminal procedure.

CERTIFICATE.

The foregoing is hereby duly settled and allowed as the defendant's bill of exceptions, it being certified that it contains in substance all of the testimony in the case.

Dated March 17th, 1922.

FRANK S. DIETRICH,  
*Judge.*

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(Title of Court and Cause).

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STIPULATION.

It is hereby stipulated by and between the respective parties hereto by their respective counsel herein that the above and foregoing Bill of Exceptions contains a full, true and correct transcript of all the proceedings had and all the evidence introduced upon the trial of said cause reduced to narrative form, together with all rulings made by the

Court therein pertaining to the issues raised by the writ of error filed herein.

Dated this 16th day of March, 1922.

P. E. CAVANEY,  
*Attorney for Defendant.*  
E. G. DAVIS,  
*U. S. District Attorney  
for Idaho.*

Endorsed: Filed March 17, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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#### PETITION FOR WRIT OF ERROR.

Now comes Charlie Sing Lee, the defendant herein, and says that on or about the 22nd day of February, 1922, said defendant was found guilty by a jury of the violation of the Act of December 17, 1914, as amended, and that on or about the 8th day of March, 1922, the Court pronounced judgment upon the said defendant in conformity with the said verdict of the jury, and said defendant complains and says that in the proceedings had prior thereunto in said cause errors were committed by the Court to the prejudice of this defendant. all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore said defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the said errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals for review.

Dated at Boise, Idaho, this 8th day of March, 1922.

CHARLIE SING LEE,  
*Petitioner.*

P. E. CAVANEY,  
*Attorney for Petitioner.*  
Residence: Boise, Idaho.

Endorsed: Filed March 8, 1922.  
W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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#### ASSIGNMENTS OF ERROR.

Said defendant in this action, in connection with his petition for a Writ of Error, makes the following Assignments of Error which he avers occurred upon the trial of the said case, to-wit:

1. The Court erred in denying defendant's motion to quash said indictment herein for the reasons the respective counts of said indictment did not charge an offense with such degree of certainty that

the Court may pronounce judgment upon conviction according to law.

(a) That two separate and distinct offenses are charged in the respective counts of said indictment, to-wit: An offense of dealing in and an offense of selling certain narcotics on the respective dates therein mentioned without having registered as required by said Act.

2. The Court erred in denying defendant's demurrer to the indictment herein for the reasons that the said indictment did not state facts sufficient to constitute an offense under the said Act.

3. That the Court erred in denying defendant's motion to require the Government to elect upon which count in the indictment it would prosecute said cause for the reason that the respective offenses alleged in the respective counts of said indictment are not such offenses as may be properly joined in the said indictment under the law.

4. The Court erred in refusing to strike on motion of the defendant the testimony of James Hill relating to an attempted sale and conversation relating to same subsequent to the time mentioned in the indictment.

5. The Court erred in permitting witness H. W. Ballaine over the objection of counsel for defendant to testify to a sale made by the defendant to Witness Ballaine subsequent to the dates alleged in the indictment.

6. The Court erred in stating to the jury the purpose for which he would permit evidence to be introduced of a subsequent sale to the time mentioned in the indictment as being circumstance bearing upon the question or issue raised as to whether or not the defendant was selling and dealing on the two preceeding days.

7. The Court erred in refusing to permit the Witness Ballaine on cross examination to answer the following question propounded to him by counsel for defendant: "Q. Were you relying absolutely on the statement of Mr. Hill in regard to whether or not he had made a purchase?" (Ballaine not being present when the alleged purchase was made by Hill from the defendant.)

8. The Court erred in permitting the Government, after it had rested its case and while the defendant was making a motion for a directed verdict, to permit the Government to re-open its case and introduce further proof upon the suggestion of the Court as to why the addict James Hill was used for procuring evidence in the case.

9. The Court erred in stating in the presence of the jury when Witness Cole was on the stand that he would permit the Government agents to show that the defendant had been suspected of selling these drugs without any previous evidence having been offered in said case showing that any sale had ever been made by the defendant prior to the dates alleged in the indictment.



10. The Court erred in permitting the Witness Cole, over the objection of counsel for defendant, to testify that he had reasons to believe that Charlie Sing Lee had been dealing in or selling narcotics prior to the dates alleged in the indictment but no particular sales or reasons were given by the witness for such belief.

11. The Court erred in asking the Witness Cole the following questions: Q. Did you know the defendant yourself? A. Yes, sir; I have known him for practically that length of time. Q. Had you been here frequently or infrequently? A. Oh, on an average of once a week for three or four days or a week or sometimes ten days. Q. I assume that the reason you say—I mean the reason you have given for believing that he was engaged in selling drugs that is the reason based upon reasons that came to you from different sources? A. Conversations with addicts and personal observation. Q. It was because of your information or that belief that you employed the witness here? A. Yes, sir. Q. He had been an addict? A. Yes, sir. Q. For the purpose of procuring evidence of the sale? A. Yes, sir; evidence.

12. The Court erred in giving the following instruction to the jury during the examination of the Witness Cole by the Court:

“Gentlemen, I will say to you, perhaps further in explanation of what I have already said in your presence, that you cannot consider the evidence just



given by this witness as to certain reports and rumors which may have come to him inducing him to believe that the defendant was engaged in the illicit sale of these drugs. You cannot consider those rumors or statements or the witness' belief as any evidence at all that the defendant here is guilty of these charges, or that he was in fact engaged in violating the law, or did in fact violate the law. The only purpose for which you can consider this evidence, and the only purpose for which I have received it, is to throw some light upon the circumstances under which this witness was employed, this former addict, to go to this place, for the purpose of getting evidence, and for the purpose of relieving the Government of the imputation or charge that it was seeking to and did induce an innocent man to violate the law. I will explain more fully the principle by which you are to be governed in passing upon this evidence later on. It is enough to say now that you are not to consider it as evidence of the defendant's guilt.

13. The Court erred in instructing the jury while Witness Hill was on the stand, over the objection of the defendant, that the words used in the said Act under which the indictment was found "deal in and sell" meant one and the same thing, and that they were not separate and distinct offenses under the said Act.

14. The Court erred in denying defendant's motion to instruct the jury to find the defendant not

guilty after the Government had closed its case for the reason that there had been no legal or competent evidence upon which the guilt of the defendant had been established by the Government, and for the further reason that the only evidence of any sale having been made of narcotics to the Witness Hill was uncorroborated testimony of the Witness Hill.

15. The Court erred at the close of the case in refusing to instruct the jury to find the defendant not guilty for the reason that there was no legal or competent evidence to justify the Court in submitting the case to the jury for the reason that the uncontradicted evidence of the defendant showed that the said defendant was not present at the time and place that the alleged sale and that there was no evidence whatever or at all to establish the fact that any sale of cocaine or morphine had ever at any time been made by the defendant to the Witness Hill or to any other person upon the dates mentioned in the indictment.

WHEREFORE, defendant prays that the judgment of the District Court may be reversed.

P. E. CAVANEY,

*Attorney for Defendant.*

Residence: Boise, Idaho.

Service of the above Assignments of Error by copy admitted and accepted this 8th day of March, 1922.

E. G. DAVIS,  
*U. S. Dist. Attorney.*

Endorsed: Filed March 8, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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ORDER.

This 8th day of March, 1922, came the defendant, Charlie Sing Lee, by his attorney, P. E. Cavaney, Esq., and filed herein and presented to the Court his petition, praying for the allowance of a Writ of Error, an Assignment of Errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the said Writ of Error. The defendant, Charlie Sing Lee, may be admitted to bail pending such appeal in the sum of Two Thousand Five Hundred Dollars.

Dated at Boise, Idaho, this 8th day of March, 1922.

FRANK S. DIETRICH,  
*District Judge.*

Endorsed: Filed March 8, 1922.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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PRAECIPE.

*To the Clerk of the Above Entitled Court:*

You are hereby requested to transmit in printed form to the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the following portions of the record, papers and files in the above entitled cause, to-wit:

1. Indictment.
2. Defendant's Assignments of Error.
3. Motion to Quash.
4. Demurrer.
5. Motion to Elect.
6. The minutes of the Court relating to said cause.
7. Defendant's Bill of Exceptions.
8. Petition for Writ of Error.
9. Order allowing Writ of Error.
10. Writ of Error.
11. Citation.
12. This Praecipe.

Dated at Boise, Idaho, this 11th day of March, 1922.

P. E. CAVANEY,  
*Attorney for Defendant.*  
Residence: Boise, Idaho.

Service of the above Praeceptum by copy admitted  
and accepted this 11th day of March, 1922.

E. G. DAVIS,  
*U. S. Dist. Attorney.*

Endorsed: Filed March 11, 1922.

W. D. McREYNOLDS, Clerk.

*The United States Circuit Court of Appeals, for the  
Ninth Judicial Circuit.*

UNITED STATES OF AMERICA,

*Plaintiff,*

VS.

CHARLIE SING LEE,

*Defendant.*

Criminal, 810.

WRIT OF ERROR.

The United States of America,        )  
  ) ss.  
Ninth Judicial District,                )

*The President of the United States to the Honorable  
Judge of the District Court of the United States  
for the District of Idaho, Southern Division.*

GREETING:

Because of the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court, before you between the United States of America, plaintiff, and Charlie Sing Lee, defendant, a manifest error hath happened, to the injury of said Charlie Sing Lee, de-

fendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same at San Francisco, California, in the said Circuit on the 10th day of April, A. D. 1922, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done, therein to correct said error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 9th day of March, A. D. 1922, and in the 45th year of the Independence of the United States of America.

Allowed by:

FRANK S. DIETRICH,

*U. S. District Judge.*

Attest:

SEAL)

W. D. McREYNOLDS,

*Clerk of the District Court of  
the United States for the Dis-  
trict of Idaho, Southern Divi-  
sion.*



Service accepted March 8, 1922.

E. G. DAVIS,

*U. S. District Attorney.*

Endorsed: Filed March 9, 1922.

W. D. McREYNOLDS, Clerk.

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*The United States Circuit Court of Appeals, for the  
Ninth Judicial Circuit.*

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

CHARLIE SING LEE,

*Defendant.*

Criminal, 810.

CITATION.

The United States of America, )  
Ninth Judicial District, ) ss.

*The President of the United States to Hon. E. G.  
Davis, United States District Attorney for the  
District of Idaho.*

GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to be holden at the City of San Francisco, California, in the said Circuit, on the 10th day of April, 1922, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein

Charlie Sing Lee is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable F. S. Dietrich, District Judge of the United States for the District of Idaho, Southern Division, at Boise, Idaho, within said District, this 9th day of March, A. D. 1922, and the 45th year of the Independence of the United States.

FRANK S. DIETRICH,  
*U. S. District Judge.*

Service accepted March 8th, 1922.

E. G. DAVIS,  
*U. S. District Attorney.*

Endorsed: Filed March 9, 1922.  
W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause).

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I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 67 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein

upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$78.70, and that the same has been paid by the Plaintiff in Error.

Witness my hand and the seal of said Court this 7th day of April, 1922.

W. D. McREYNOLDS,  
*Clerk.*

